

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHOW, MOHD. SALIM
(CIS File # A93 303 738)

Plaintiff,

-v-

RMB
Case No. 08 CV 03185
ECF CASE

MICHAEL B. MUKASEY, ATTY. GENERAL
AND
ANDREA J. QUARANTILLO,
U.S.C.I.S., N.Y. DISTRICT DIRECTOR

Defendants.
-----X

PLAINTIFF'S ORIGINAL COMPLAINT
FOR WRIT IN THE NATURE OF
MANDAMUS

Comes now MOHD. SALIM CHOW, plaintiff in the above styled and numbered case, and for cause of action show unto this Court the following:

1. This action is brought against the defendants to compel favorable action on motion to reopen a Legalization case properly filed by the plaintiff. The legalization case was filed and remains within the jurisdiction of the Defendants who have improperly denied a motion to reopen the I-687 case to plaintiff's detriment.

PARTIES

2. Plaintiff Mohd. Salim Chow was born in Bangladesh on March 9, 1956. He arrived in the U.S. in New York City in 1981. By trade, he is a construction helper and works ad hoc for several firms on a daily basis. He is single and has no children. Mr. Chow worked pursuant to work authorization obtained from his I-687 case. This was terminated on Dec. 12, 2007. He filed his I-687 for temporary residence in 1991.

3. Defendant, Michael B. Mukasey, is Attorney General of the United States, and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act (INA), and is further authorized to delegate such powers and authority to subordinate employers of the Department of Justice, 8 USC Section 1103 (a). More specifically, the Attorney general is responsible

for the adjudication of I-687 applications filed pursuant to section 245A of the INA. USCIS is an agency within the attorney general's authority has in part been delegated, and is subject to the attorney general's, supervision.

4. Defendant, Andrea J. Quarantillo, District Director in NYC, is an official of USCIS generally charged with supervisory authority over all operations of USCIS within her district with certain specific exceptions not relevant here. 8 CFR section 103.1 (9) (2) (ii) (B). As will be shown, plaintiff filed an I-687 application in Chicago, I.L. and this was sent to defendant District Director for adjudication.

JURISDICTION

5. Jurisdiction in this case lies with the District Court which has the power to adjudicate procedural challenges to USCIS action in Legalization Cases (McNairy v. Haitian Refugee Center, Inc. 498 U.S. 479 (1991)).

VENUE

6. Venue is proper in this Court, pursuant to 28USC section 1391 (e) in that this is an action against officers and agencies of the United States in their official capacities, brought in the district where a substantial part of the events or omissions giving rise to plaintiff's claim occurred. More specifically, plaintiff's Legalization case was properly filed and to plaintiff's knowledge, was closed by the District Director in New York City, N.Y.

EXHAUSTION OF REMEDIES

7. Plaintiff has exhausted his administrative remedies. Plaintiff was informed by USCIS through its District Director that an administrative appeal of a denial of a motion to reopen did not lie.

8. On March 4, 2005, plaintiff filed Form I-687 with the United States Citizenship and Immigration Services for Temporary Resident Status pursuant to the CSS/Newman Settlement. At that time, plaintiff resided at 564 Grant Avenue, # P.H., Brooklyn, NY 11208. On 10/5/2006, plaintiff notified USCIS of a change of mailing address by mailing Form AR-11 as 401 Broadway 901, NYC, NY 10013. On 5/15/2007, USCIS scheduled plaintiff for an I-687 interview that mailed a hearing notice to his old address. Plaintiff never received the hearing notice and did not appear at the interview.

9. Thereupon, USCIS closed plaintiff's I-687 case on 5/15/2007. On October 4, 2007 the Service declined a first request for a Motion to Reconsider the denial of the application. On Dec. 12, 2007 the Service denied a second request for relief saying that "the Service made an effort to send the letters to the latest address on our records."

10. Defendant's refusal to grant relief in this case is, as a matter of law, arbitrary and not in accordance with the law. Defendants willfully and unreasonably have refused to

adjudicate plaintiff's I-687 application properly thereby depriving plaintiff of the peace of mind to which he is entitled.

11. Plaintiff has been greatly damaged by the failure of defendants to act in accordance with their duties under the law.

(a) Plaintiff has been damaged by simply being deprived arbitrarily of the status of lawful permanent resident to which he is entitled.

12. Plaintiff has requested USCIS to reconsider its decision by submitting proof that he notified it of a change in his address, all to no avail. Accordingly, plaintiff has been forced to retain the services of an attorney to pursue the instant action.

PRAYER

13. Wherefore, in view of the arguments and authority noted hearing, plaintiff respectfully prays that the defendants be cited to appear here and that, upon due consideration, the Court enters an order:

- (a) requiring defendants to reopen plaintiff's I-687 case;
- (b) according plaintiff reasonable attorney's fees; and
- (c) granting such other relief at law and in equity as justice may require.

Respectfully submitted,

Date: New York, NY
March 28, 2008

David J. Rodkin Esq.
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List of Attachments

Exhibit Description

- A. I-687 application;
- B. Change of address Form AR-11;
- C. Decision of USCIS Dec. 12, 2007.

State of New York)
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)
County of New York)
Affirmation of Service

David J. Rodkin, Esq., who has an office at 401 Broadway, Suite 705, NYC, NY 10013, and who is admitted to practice law before the U.S. District Court, Southern District for New York, hereby affirms as follows:

1. That I represent Mohd. Salim CHOW (A93 303 738) in his Writ of Mandamus to the U.S. District Court, Southern District of New York;
2. That I served **a copy of the Writ of Mandamus** in the case of Chow, Mohd Salim v. 1. Michael B. Mukasey, U.S. Attorney General, to the Clerk's Office, U.S. Attorney, Department of Justice, P.O. Box 878 Ben Franklin Station, Washington, D.C. 20044, and 2. Andrea J. Quarantillo, U.S.C.I.S. NY District Director, 26 Federal Plaza, 11th Floor, New York, NY 10278 by first class mail on **March 31, 2008**.

Date: March 31, 2008

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